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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re R.M. et al., Persons Coming Under  
the Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.R.,

Defendant and Appellant.

E054883

(Super.Ct.Nos. J233189, J233190 &  
J233902)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gregory S. Tavill,  
Judge. Affirmed.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Jean-Rene Basle, County Counsel, and Danielle E. Wuchenich, Deputy County  
Counsel, for Plaintiff and Respondent.

## I

### INTRODUCTION

Mother argues the court erred in denying her Welfare and Institutions Code section 388 petition.<sup>1</sup> This case involves twin boys, born in August 2008, and a third boy, I.M., born in July 2010. R.M., an older half-sister, has the same father as the three boys but not the same mother. Father and R.M. are not parties to the appeal.

We affirm the order of the juvenile dependency court.

## II

### FACTUAL AND PROCEDURAL BACKGROUND

#### *A. Removal and Detention*

The Department of Children and Family Services (CFS) filed an original section 300 dependency petition in June 2010 concerning the twins. The petition alleges that mother and father had abused the twins' sibling, R.M., causing bruises, burns, a bald patch on her scalp, a swollen lip, lacerations inside the mouth, and a healing rib fracture.

According to the detention report, father could not explain R.M.'s injuries. After R.M. was medically assessed and her multiple injuries were determined to be nonaccidental, CFS met with father and mother. Mother said R.M. was autistic and may have been hurting herself. Based on the medical assessment of R.M., the twins were removed and detained in the home of the maternal grandmother.

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

CFS interviewed mother and father separately. Father said the children played roughly and he denied noticing any bruising on R.M. until it was pointed out to him. He claimed R.M. had “old scars,” not bruises. He could not explain the bald patch, the broken rib, the burn, or the lacerations in her mouth. Father denied hurting R.M. and said he loved her. He attributed her underweight to slow eating.

Mother also denied seeing any bruises and she claimed R.M. continuously bit her upper and lower lip and “clap[ped] her hands, hitting the wall.” Mother could not explain the burn or the rib fracture. She said R.M. lacked communication skills. Her low weight was due to slow eating.

The family was living in a quiet, safe, mobile home park. Their home was clean and organized. Father stayed home with the children. Mother was training to be a medical assistant and working intermittently. They received public assistance and food stamps.

A fourth child, I.M., was born on July 10, 2010. On July 14, 2010, the parents were arrested for the abuse of R.M. and CFS filed another original dependency petition, seeking removal and detention of the newborn, alleging no provision for support and abuse of sibling. (§ 300, subds. (g) and (j).) Mother was released after five days. Father continued to be incarcerated in August 2010. I.M. was placed with a foster mother. Mother visited I.M. weekly. The twins were also placed with the foster mother in October 2010 because the maternal grandmother could not care for them.

### *B. Jurisdiction and Disposition*

On October 28, 2010, the court conducted a combined jurisdictional and dispositional hearing. The court declared the twins and I.M. to be dependents of the court, removed them from parental custody, and ordered the parents to receive reunification services and semi-weekly supervised visitation.

### *C. The April 2011 Section 388 Petition*

A new social worker, Sarah Ramirez, was assigned to this case in December 2010.

On April 15, 2011, mother filed a JV-180, request to change court order, asking the court to order CFS to assign a new social worker and asking that the children not be moved from their foster placement without a hearing. Mother stated the children were comfortable with the foster mother, who was willing to consider guardianship or adoption. Mother had a friendly, cooperative relationship with the foster mother who gave the children loving and excellent care. Mother had obtained a medical assistant diploma in January 2011.

Mother felt the social worker, Sarah Ramirez, was biased against her and had threatened to place the children for adoption unless mother accepted personal responsibility for R.M. Mother believed Ramirez had been disciplined in connection with the present case and she bore mother a grudge. Mother characterized Ramirez's treatment as "aggressive, insulting, and demeaning." Mother had been requested and denied further counseling services after November 2010. Mother was not given notice that her weekly visits could no longer be supervised by the foster mother instead of CFS. Ramirez had misrepresented the foster mother as being unwilling to care for the children.

Additionally, the maternal grandmother was willing to accept a permanent placement of the children. Mother also proposed a nonrelated, extended family member for placement.

The foster mother filed a request for de facto parent status for the three children.

The court scheduled a hearing for April 2011, concurrent with the six-month review hearing.

CFS filed a status review report prepared by Ramirez. In November 2010, mother's counselor had described mother as repeatedly denying having participated in the abuse and neglect of R.M. Father also denied any culpability. Ramirez described a pattern of noncooperation by the parents between January and April 2011. Both parents continued to deny any involvement in or knowledge about R.M.'s injuries. They were angry and defensive. Mother and father were not providing CFS with information about their residence, school, or employment although CFS had information the parents had moved to Riverside County. Parents had not reported their participation in a parenting course. They disagreed that they needed to complete any more services. At one point, mother told a counselor that she was going to leave father and the abuse of R.M. had happened while mother was in school. She then said father had moved out.

On April 16, 2011, the three children were placed in a concurrent home with Mr. and Mrs. C. because the previous foster mother seemed disinterested in the twins and overwhelmed by the demands of her daycare business. More particularly, the foster mother had changed visitation from McDonald's to her home without notice and the foster mother was only offering partial supervision. The foster mother had also placed children in weekend respite with ASPIRAnet without notice. The foster mother was

seeking financial help to put the twins in preschool so she could add more children to her daycare business. The foster mother wanted to adopt I.M. but not the twins. The children were healthy and well adjusted in their placement with Mr. and Mrs. C.

At the hearing on April 28, 2011, the court found the children had been properly placed with Mr. and Mrs. C. and that reunification services and visitation for the parents should continue. The court ordered the maternal grandmother to be assessed for placement, contingent upon mother moving out. The court denied the foster mother's request for de facto parent status.

*D. The August 2011 Section 388 Petition*

On August 26, 2011, mother filed a second JV-180, request to change order, asking for adequate reunification services, expanded visitation, and an order for placement with the maternal grandmother. In her declaration, mother said she had completed two parenting and two anger management classes. She was completing 20 classes of a domestic violence course. She accused the social worker of opposing additional visitation. Mother had moved out of the maternal grandmother's home but CFS delayed the assessment before refusing to recommend placement with the maternal grandmother. Mother complained the social worker displayed her bias by calling mother by her first name and Mrs. C., "Mommy." Mother also expressed worries that the foster parents were able to provide more for the children and she was upset they had the twins the week of their birthday.

The maternal grandmother submitted her supporting declaration, stating she had been ill but was ready to take care of the children. She had prepared bedrooms for the

boys and she was working two jobs. If necessary, she would quit one job and her sister would help her with childcare.

On August 31, 2011, the court summarily denied the petition without a hearing, indicating the request did not state new evidence or a change of circumstances and that the social worker had the authority to increase the amount of visitation if warranted. Mother appealed.<sup>2</sup>

### III

#### DISCUSSION

Mother argues her petition offered three categories of new evidence: that the maternal grandmother's home had been approved but CFS refused to place the children there; that mother had completed parenting and anger management courses and was progressing in therapy but CFS still refused to expand visitation; and the relationship with the social worker had deteriorated even more between April and August 2011. Mother also contends it would serve the best interests of the children to place them with the maternal grandmother and to give mother expanded visitation. Mother asserts she was entitled to a full evidentiary hearing on the August petition. The county, of course, opposes each of these contentions.

"We review such a summary denial for abuse of discretion (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250) . . . .

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<sup>2</sup> We do not summarize the record after August 31, 2011. But we take note that the information about mother "rolling her eyes," "smirking" about R.M.'s injuries, and saying that she regretted having assumed the care of R.M. was not part of the record when the court ruled on August 31, 2011.

“Section 388 provides, in relevant part, ‘(a) Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition shall . . . set forth in concise language any change of circumstance or new evidence which are alleged to require the change of order or termination of jurisdiction. [¶] . . . [¶] (c) If it appears that the best interests of the child *may* be promoted by the proposed change of order, . . . , the court *shall* order that a hearing be held and shall give prior notice, . . .’ (Italics added.)

“A petition under this section must be liberally construed in favor of its sufficiency. (Cal. Rules of Court, rule 1432(a).) Thus, if the petition presents *any* evidence that a hearing would promote the best interests of the child, the court must order the hearing. (*In re Aljamie D.* (2000) 84 Cal.App.4th 424, 431-432.) The court may deny the application ex parte only if the petition fails to state a change of circumstance or new evidence that even *might* require a change of order or termination of jurisdiction. (Cal. Rules of Court, rule 1432(b); *In re Aljamie D.*, *supra*, 84 Cal.App.4th at pp. 431-432.)” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460-461.)

The petitioner has the burden of showing a change of circumstances and establishing a child’s best interests. (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1703.) Mother has not succeeded here.



No new evidence was submitted on the issue of placement with the maternal grandmother. In August 2011, the maternal grandmother had been assessed and qualified for placement. Nevertheless, that did not mean CFS was compelled to place the children with her. The twins had originally been placed with the maternal grandmother and then removed at her request in October 2010. I.M. was never in her care. During most of the dependency proceedings, the maternal grandmother had little, if any, contact with the three children. The maternal grandmother's declaration suggested there could be problems with the placement of three small children because she was working two jobs and relying on her sister to help with their care. These other factors fully supported CFS's ongoing determination that she was not a suitable placement for the children. For the same reasons, placement with the maternal grandmother was not in the best interests of the children. (*Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1033-1036.)

Mother also argues she demonstrated changed circumstances justifying increased visitation because she had completed parenting, anger management, and domestic violence courses, and participated in therapy. But, what the record shows is that, while mother participated in services, she continued to deny any knowledge about R.M.'s injuries, except for an isolated concession that father may have hurt R.M. when mother was at school. In April 2011, mother told the social worker she still did not believe father had hurt R.M. and that she had separated from him only because she wanted her children back. In therapy, R.M. had disclosed that father, mother, and the maternal grandmother had hurt her. R.M. displayed the behaviors of an abused child. In a meeting with the social worker on August 30, 2011, mother rolled her eyes and did not respond to R.M.'s

disclosure that mother had hurt her. Mother also said she regretted taking care of R.M. because “she was nothing to me, and it was not my responsibility.” All of these considerations militate against expanding and liberalizing mother’s visitation with the other children. Mother could not demonstrate that she was making progress toward reunification (*In re Hashem H.* (1996) 45 Cal.App.4th 1791, 1797-1798) or that CFS was abusing its authority. (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1377.)

Finally, mother’s reiteration of the difficulties of her relationship with the social worker simply repeated, with amplification, the same complaints made by mother in her April petition.

Under these circumstances, the placement and visitation orders are in the best interests of the children. (*In Chantal S.* (1996) 13 Cal.4th 196, 201.)

#### IV

#### DISPOSITION

The juvenile court properly denied mother’s petition. We affirm.

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CODRINGTON

J.

We concur:

RAMIREZ

P. J.

MILLER

J.